

Missouri Department of Mental Health Business Associates Agreement

THIS HIPAA Business Associates Agreement (“Agreement”) is entered into on this, the _____ day of _____, 200_, by and between the Missouri Department of Mental Health or any of the various mental health facilities owned and operated by the Missouri Department of Mental Health (“Covered Entity”) and _____, (“Business Associate”). If an agreement or contract already exists between the Covered Entity and the Business Associate, this Agreement supplements and is made part of the existing agreement. The Agreement is effective as of _____ (“Effective Date”).

WITNESSETH:

WHEREAS, the interaction between Covered Entity and Business Associate is governed by an existing contract under which Covered Entity and Business Associate use or disclose between themselves Protected Health Information (“PHI”) as defined by the Standards for Privacy of Individually Identifiable Health Information (“Privacy Regulations”) of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and this PHI assists Business Associate in providing necessary goods and services to the Covered Entity, and

WHEREAS, Business Associate may receive from, create or receive PHI on behalf of Covered Entity while providing necessary goods and services to Covered Entity, and

WHEREAS, both parties recognize the importance of and are committed to protecting the privacy and confidentiality of any PHI disclosed to the Business Associate pursuant to this Agreement, in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and any regulations promulgated thereunder by the U.S. Department of Health and Human Services, and

WHEREAS, both parties receive considerable benefit from their interactions with each other and wish to continue their relationship in the future, and

WHEREAS, the purpose of this Agreement is to satisfy the requirements of HIPAA and any regulations promulgated thereunder, including, but not limited to, Title 45, Section 164.504 (e) of the Code of Federal Regulations (“CFR”), as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information between the parties, both parties agree that this Agreement will govern the manner in which Business Associate will protect, use, disclose and handle PHI provided by, created by or received by Business Associate from or on behalf of Covered Entity during the term of this agreement and after its termination as follows:

Section I. Definitions.

Any term used in this document that has not been otherwise defined herein shall be given the same definition as that term is given in the Privacy Regulations, specifically, 45 CFR 160.103 and 164.501.

“Protected Health Information” or “PHI” shall have the same meaning assigned to that term in 45 CFR 164.501, except that it shall be limited to information created or received by Business Associate from or on behalf of Covered Entity.

Section II. Obligations and Activities of Business Associate

- (a) *Permitted Uses and Disclosures.* Business Associate agrees that neither it nor any member of its workforce will use or disclose PHI in any manner or for any reason other than those expressly set out in this Agreement or required by law.
- (b) *Safeguards.* Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI in any manner or for any reason other than those set out in this Agreement or required by law. Business Associate shall maintain a comprehensive written information privacy and security program (“comprehensive program”) to protect such PHI. This comprehensive program will include administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate’s operations and the nature and scope of its activities.
- (c) *Proof of Comprehensive Plan.* In order to ensure Covered Entity and Business Associate remain in compliance with the provisions of the Privacy Rule, Business Associate agrees to provide to Covered Entity or, upon request, to the Secretary of the United States Department of Health and Human Services (“Secretary”), proof of its comprehensive program to protect PHI and also agrees to provide Covered Entity or Secretary with access to Business Associate’s facilities for inspection and copying of its books, records, internal practices, policies and procedures regarding this comprehensive program to protect PHI.
- (d) *Workforce Training.* Business Associate agrees that any member of its workforce who work directly with or may come into contact with PHI will receive full training as to the comprehensive program as well as Business Associate’s duties pursuant to this Agreement. Business Associate agrees to take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in violation of this Agreement.
- (e) *Reporting of Wrongful Use or Disclosure of PHI.* Business Associate agrees that if it learns of any use or disclosure of PHI by Business Associate or any member of its workforce in any manner or for any reason other than those set out in this Agreement or required by law, it will report such wrongful use or disclosure to Covered Entity within two (2) business days of its discovery. The report shall include: the date of the disclosure; the person to whom the disclosure was made; the address of the person to whom the disclosure was made, if known; a brief description of the PHI released; the purpose of the disclosure; and any corrective action Business Associate is taking to try to ensure such disclosures do not occur in the future.
- (f) *Disclosure of PHI to Business Associate’s Agents.* Business Associate agrees to ensure that any of its agents or subcontractors which receive any PHI will agree to the same restrictions and conditions on the use or disclosure of the PHI that the Business Associate has agreed to under this Agreement.
- (g) *Access to PHI.* If Business Associate maintains PHI in a Designated Record Set, Business Associate agrees that, when requested by Covered Entity, within ten (10) business days after the date of that request, Business Associate will provide, in a manner designated by Covered Entity, access to

such PHI to either Covered Entity or to an Individual in order to meet the requirements of 45 CFR 164.524.

(h) *Amendments to PHI.* If Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to such PHI that Covered Entity directs or agrees to with an Individual pursuant to 45 CFR 164.526, within ten (10) business days after notification of such amendment and in the manner designated by Covered Entity.

(i) *Provide Accounting of Disclosure of PHI.* Business Associate agrees to: (1) document such uses or disclosures of PHI and all necessary information related to such uses or disclosures as would be necessary for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 and (2) provide such documentation to Covered Entity or an Individual, in a time and manner designated by Covered Entity, not to exceed fifteen (15) business days, so that Covered Entity may respond to any request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. 164.528. At a minimum, Business Associate shall provide Covered Entity with the date of the disclosure, the name of the entity or person who received the PHI and (if known by Business Associate) the address of such entity or person, a brief description of the PHI disclosed, and a brief statement of the purpose of the disclosure that reasonably describes the basis for the disclosure.

(j) *Mitigate Losses.* Business Associate agrees that if it has knowledge of any harmful effect of a use or disclosure of PHI by Business Associate that would violate this agreement, it will mitigate such effect, to the extent practicable.

Section III Permitted Uses and Disclosures by Business Associates

(a) *Permitted Uses.*

Business Associate shall not use PHI except for: (i) the purpose of performing Business Associate's obligations to Covered Entity under any existing or future agreement, contract, contract provider agreement or purchase of services agreement between Business Associate and Covered Entity or (ii) any other purpose specifically permitted under this Agreement. Further, Business Associate shall not use PHI, created, received or disclosed pursuant to this Agreement, in any manner that constitute a violation of the Privacy Rule if so used by the Covered Entity except for the uses found in subsection (b) of this Section. The typical permitted uses or disclosures would be those for treatment, payment and/or healthcare operations as defined in 45 CFR Section 164.501, et seq.

(b) *Additional Uses.*

i. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

ii. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed *only* as required by law or for the purposes for

which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

iii. As permitted by 45 CFR 164.504(e)(2)(i)(B), Business Associate may use PHI to provide data aggregation services to Covered Entity, so long as the Covered Entity and Business Associate enter into an agreement or contract through which such services are provided.

(c) Permitted Disclosures.

Business Associate shall not disclose PHI in any manner that would constitute a violation of the Privacy Rule if disclosed by the Covered Entity, except that Business Associate may disclose PHI: (i) in a manner permitted pursuant to this Agreement; (ii) for the proper management and administration of the Business Associate; (iii) as required by law; or (iv) for the data aggregation services for the health care operations of the Covered Entity.

Before disclosing PHI to any third party, unless the disclosure is required by law, Business Associate must first obtain reasonable assurances from the entity receiving the PHI that it will: (i) maintain the confidentiality of the PHI and only disclose the PHI as required by law or for the purposes for which it was disclosed to the third party and (ii) immediately notify Business Associate of any breaches of confidentiality as soon as it learns of such breaches.

Section IV Obligations of Covered Entity

(a) Covered Entity agrees to be responsible for using appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement, until such PHI is received by Business Associate.

(b) Covered Entity agrees to provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. 164.520, as well as any changes to such notice.

(c) Covered Entity agrees to provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

(d) Covered Entity agrees to notify Business Associate of any restrictions to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

(e) Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if performed by Covered Entity, except for those practices permitted by the Privacy Regulations and found in Section III(b) of this Agreement.

Section V DMH Organized Health Care Arrangement

(a) If Business Associate is a Contract Provider providing mental health and/or substance abuse and/or developmental disabilities services to DMH clients, then by accepting this Business Associates Agreement, Business Associate is, hereby, designated a member of the DMH Organized Health Care Arrangement and shall have additional duties as set forth in this section. The DMH Organized Health Care Arrangement is defined as DMH, its state operated facilities, and all DMH contract providers

providing mental health and/or substance abuse and /or developmental disabilities services to DMH consumers.

(b) Business Associate shall incorporate into its business practices regarding compliance with the Privacy Rule, Covered Entity's definition of "designated record set" (found in DMH Departmental Operating Regulation 8.100) and "psychotherapy notes" (found in DMH Departmental Operating Regulation 8.030).

(c) Business Associates subject to this section and deemed to be part of the DMH Organized Health Care Arrangement shall create a Notice of Privacy Practices which shall be given to all DMH consumers, at the very latest, at the time of the consumer's first service following the effective date of the Privacy Rules. Covered Entity shall provide Business Associate with boilerplate language regarding Covered Entity's Notice of Privacy Practices and Business Associate shall incorporate this language into its own Notice of Privacy Practices. Business Associate's Notice of Privacy Practices shall also clearly list as a permissible use and/or disclosure, sharing of the DMH consumer's PHI with other members of the DMH Organized Health Care Arrangement for purposes of treatment, payment and health care operations. Covered Entity acknowledges that there will be some provisions in Business Associate's Notice of Privacy Practices that differ from Covered Entity's Notice of Privacy Practices, such as inclusion of Business Associate's website, if applicable, Business Associate's use of facility directories, Business Associate's privacy contact person and Business Associate's marketing practices.

(d) Covered Entity and Business Associate are independent entities and Business Associate's inclusion in the DMH Organized Health Care Arrangement is not intended or shall be construed to create an agency relationship, employment relationship or joint venture between the parties. Furthermore, neither party intends for this agreement to alter in any way their respective rights or their legal obligations to one another or to any third party.

Section VI Audits and Inspections

Upon learning of a possible HIPAA regulation violation, or that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. Business Associate shall promptly remedy any violation of any term of the Agreement. Any right of, action by or inaction by Covered Entity pursuant to this section, shall not constitute an acceptance of any unsatisfactory practice pursuant to this Agreement and does not relieve Business Associate of its responsibility to comply with this Agreement.

Section VII Amendment

The parties acknowledge that federal and state laws regarding electronic data security and privacy are rapidly evolving and that amendment of this Agreement might be required to ensure compliance with such developments. The parties agree to take such action as necessary to implement the standards and requirements of HIPAA, the Privacy Regulations, any other regulations promulgated under HIPAA, and any other applicable laws relating to the security and confidentiality of PHI. Thus, the parties agree that upon the enactment of any law or regulation affecting the use or disclosure of PHI, or the publication of any decision of any federal or state of Missouri court having jurisdiction over the parties to this Agreement or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of HIPAA or any HIPAA regulations, Covered Entity may, by written

notice to Business Associate, amend this agreement in order to maintain compliance with that law, regulation, ruling, interpretive policy or opinion.

Section VIII Material Breach

If Covered Entity becomes aware of any pattern of activity or practice by Business Associate which would constitute a material breach of any of the provisions of this Agreement, Covered Entity may, at its discretion, provide an opportunity for Business Associate to cure the breach and end the violation or immediately terminate this Agreement and any other agreements between the parties requiring the transfer of PHI. Further, if Business Associate does not cure the breach or end the violation to Covered Entity's satisfaction within a specified time frame, Covered Entity may, if feasible, terminate this Agreement and any other agreement requiring the transfer of PHI that might exist between the parties. If termination of this Agreement is not feasible, Covered Entity shall report Business Associate's breach or violation to the Secretary pursuant to 45 C.F.R. 164.504(e)(1)(ii).

Section IX Term and Termination

(a) *Term.* This Agreement begins on the Effective Date and remains in effect until all PHI is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this Section.

(b) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

(2) In the event that Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associates shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the PHI stays in the custody of the Business Associate.

Section X Miscellaneous

(a) *Disclaimer.* Business Associate is solely responsible for all decisions made by Business Associate regarding safeguarding PHI.

(b) *No Third-Party Beneficiaries.* Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

(c) *Choice of Law.* The law of the State of Missouri shall govern this Contract.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

Covered Entity

Business Associate